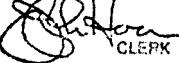


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

FILED

JAN 22 2008


Clerk

SOUTHERN DIVISION

KARIN MONZEL,

*

CIV. 07-4157

*

Plaintiff,
vs.

*

MEMORANDUM OPINION
AND ORDER RE:
MOTION TO DISMISS

MASTERWORKS, INC., TIM GLADER,
and GERALD BARRETT,

*

*

*

Defendants.

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*

Plaintiff filed a Complaint alleging sexual harassment, sexual discrimination and retaliation on October 19, 2007. Doc. 1. On that date, two Summons were issued. Doc. 4. The final page of the Complaint includes a "Certificate of Service" certifying that an original of the document was mailed to Attorney Jean Hagerty on October 19, 2007. On October 22, 2007, Plaintiff filed a document captioned, "Certificate of Service," certifying that a file stamped original of the Summons and Complaint in the above captioned matter was mailed via certified mail on the 19th day of October 2007, to Defendant Gerald Barrett. Doc. 5.

In their motion to dismiss, which was filed and served on counsel for Plaintiff on November 9, 2007, Defendants contend that neither of these filings of certificate of service nor the underlying attempts at service comport with the requirements under the Federal Rules of Civil Procedure to initiate an action. Doc. 6. Plaintiff has not filed a response to the motion to dismiss.

FED.R.CIV.P. 4(e) provides:

Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual

personally;

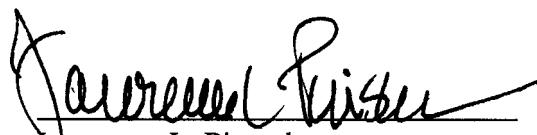
- (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Plaintiff's attempts at serving the Summons and Complaint have not met the requirements of FED.R.CIV.P. 4(e). For this and the additional reason that Plaintiff has not responded to the motion to dismiss, Defendants are entitled under FED.R.CIV.P. 12(b)(5) to have the action dismissed. Accordingly,

IT IS ORDERED that Defendant's Motion to Dismiss (Doc. 6) is granted and the above action is dismissed without prejudice.

Dated this 10th day of January, 2008.

BY THE COURT:



Lawrence L. Piersol

United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY Jackie Meissner

DEPUTY